



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Aviation Safety

800 Independence Ave  
Washington, DC 20591

May 26, 2022

Exemption No. 18628A  
Regulatory Docket No. FAA-2001-9369

Mr. Jonathan P. Miller  
Executive Director of Operations  
U.S. Customs and Border Protection, Air and Marine Operations  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

Dear Mr. Miller:

This letter is to inform you that the Federal Aviation Administration (FAA) has granted your petition to extend and amend Exemption No. 18628. This letter transmits the FAA's decision, explains the FAA's basis, and provides the conditions and limitations of the exemption, including the date the exemption ends.

### **The Basis for the FAA's Decision**

By letter posted to the docket on March 22, 2022, you petitioned the FAA on behalf of U.S. Customs and Border Protection (CBP), Air and Marine Operations (AMO) for an exemption from §§ 91.111(b), 91.117(a), (b), and (c), 91.119(c), 91.159(a), and 91.209(a)(1) and (b) of Title 14, Code of Federal Regulations (14 CFR) to the extent necessary to allow CBP, AMO to conduct air operations in support of drug law enforcement and drug traffic interdiction.

In your petition, you request that the FAA's decision to grant this exemption specifically cite "homeland security missions" in lieu of the previous reference in Exemption No. 18628 to "air operations in support of drug law enforcement and drug traffic interdiction."

In your petition, you indicate that there has been no change in the conditions and reasons relative to public interest and safety that were the basis for granting the original exemption.

### **The FAA's Decision**

The FAA has determined that good cause exists for not publishing a summary of the petition in the *Federal Register*. The FAA has determined that good cause exists because the requested extension of the exemption would not set a precedent and any delay in acting on this petition would be detrimental to CBP, AMO.

AFS-22-00640-E

The FAA has determined that the justification for the issuance of Exemption No. 18628 remains valid with respect to this exemption and is in the public interest. Therefore, under the authority provided by 49 U.S.C. §§ 106(f), 40113, and 44701, which the FAA Administrator has delegated to me, I hereby grant U.S. Customs and Border Protection, Air and Marine Operations an exemption from §§ 91.111(b), 91.117(a), (b), and (c), 91.119(c), 91.159(a), and 91.209(a)(1) and (b) of Title 14, Code of Federal Regulations (14 CFR) to the extent necessary to allow CBP, AMO to conduct homeland security missions, subject to the following conditions and limitations.

### **Conditions and Limitations**

1. The pilot of an aircraft engaged in operations authorized herein is not relieved from the see and avoid requirements of § 91.113 (Right-of-way rules: Except water operations) or any other regulatory requirement not specifically relieved under this exemption.
2. Operations under this exemption are authorized only to the extent necessary for the interdiction aircraft to obtain positive identification of, and maintain visual contact with, a suspect aircraft, vessel, or vehicle.
3. When operating under this exemption, the pilot must ensure that a dedicated observer, in addition to the pilot, is on board the interdiction aircraft. The observer's responsibility must be to assist the pilot in seeing and avoiding other aircraft. When use of a dedicated observer in the interdiction aircraft is not possible due to aircraft configuration, the use of primary radar equipment that is capable of detecting all aircraft operating in the vicinity of the interdiction aircraft, or a dedicated spotter aircraft with a qualified observer on board, must be used to assist the pilot of the interdiction aircraft in detecting and avoiding another aircraft. Spotter aircraft or aircraft having onboard primary radar equipment for the purpose of detecting other aircraft must maintain two-way radio communications with the interdiction aircraft with advisories regarding the relative positions of other aircraft in the area. Spotter aircraft and primary radar surveillance aircraft must be operated for the sole purpose of detecting other aircraft in the vicinity and advising the pilot of the interdiction aircraft of potential collision hazards and must not be engaged in the interdiction operation.
4. Relief from the provisions of § 91.117(a) and (c) is granted provided a dedicated observer having the sole responsibility to assist the pilot in detecting and avoiding other aircraft is on board the aircraft. Further, the FAA has determined that relief from the provisions of § 91.117(b) is granted provided the AMO pilot establishes two-way radio communication with the appropriate air traffic control tower (ATCT) controller, maintains two-way radio communication with the appropriate ATCT before entering the affected ATCT's airspace, complies with any instructions or clearances from the ATCT controller, and maintains two-way radio communication with the appropriate ATCT for the duration of operations within the ATCT's airspace. Additionally, as in the case of relief from the provisions of § 91.117(a) and (c), a dedicated observer must be on board the aircraft to watch

for, and alert the pilot to, other aircraft. The use of air traffic control (ATC) traffic advisory service, when available, is highly recommended. This grant of exemption, however, should not be construed as obligating any ATC facility to provide traffic advisory service, and the receipt of ATC traffic advisory does not relieve the AMO pilot from the responsibility to see and avoid other aircraft.

5. The FAA is authorizing AMO to operate its aircraft at altitudes in noncompliance with § 91.119(c):
  - a. Only for drug law enforcement or drug interdiction operations in a mission- compromised situation; and
  - b. Provided the AMO aircraft may be operated as close as 200 feet from the suspect but no closer than 500 feet from other persons, vehicles, vessels, or structures.
6. The FAA is authorizing AMO to operate its aircraft at altitudes in noncompliance with § 91.159(a):
  - a. Only to the extent necessary to obtain positive identification of a suspect aircraft and to maintain visual contact with that aircraft; and
  - b. Provided a dedicated onboard observer will assist the pilot in seeing and avoiding other aircraft. A pilot of the AMO aircraft may not operate at an altitude in noncompliance with § 91.159(a) within ATCT controlled airspace unless specifically authorized by the ATC facility having jurisdiction over that airspace. Additionally, the AMO aircraft must be equipped with an operable transponder with automatic altitude reporting capability (Mode C) that is replying on the appropriate code assigned by ATC.
7. Operations in noncompliance with § 91.209(a)(1) and (b) are authorized only for those aircraft engaged in air interdiction operations and only when one of the following alternative means of deriving air traffic information is used:
  - a. Primary radar equipment capable of detecting all aircraft operating within the vicinity of the interdiction aircraft; or
  - b. Spotter aircraft operating in a position to visually detect other aircraft in the vicinity of the interdiction aircraft. Interdiction aircraft must maintain two-way radio communications with the spotter aircraft for the purpose of receiving air traffic information regarding other aircraft operating in the vicinity and for advising the pilot of the interdiction aircraft of potential collision hazards. Only AMO interdiction aircraft are authorized to operate without lighted position/anti- collision lights. Any other aircraft used by AMO as spotter aircraft or primary radar surveillance aircraft must be operated in compliance with § 91.209(a)(1) and (b). Interdiction aircraft must be operated with the aircraft's position lights to the maximum extent practicable and may only be operated without lights when necessary to avoid detection by elements engaged in illegal drug activities.

8. The pilot of the interdiction aircraft must:
  - a. Establish two-way radio communication with the appropriate ATCT before entering the ATCT's airspace area;
  - b. Maintain two-way radio communication while within the affected ATCT's airspace area;
  - c. Comply with all instructions and clearances from the ATCT; and
  - d. If available, should receive ATC advisory service from the ATCT.
9. AMO must ensure that all pilots and crewmembers who will conduct airborne drug interdiction are thoroughly briefed and have a complete understanding of the conditions and limitations of this exemption.
10. AMO must ensure that all aircraft used to conduct operations under this exemption are equipped with a Mode C transponder and that the transponder is operated on the appropriate code or as assigned by ATC.
11. This exemption is not valid for operations outside the United States.

Failure to comply with any of the above conditions and limitations may result in the immediate suspension or rescission of this exemption.

#### **The Effect of the FAA's Decision**

The FAA's decision amends Exemption No. 18628 to 18628A and extends the termination date to October 31, 2024 unless sooner superseded or rescinded.

To request an extension or amendment to this exemption, please submit your request by using the Regulatory Docket No. FAA-2001-9369 (<http://www.regulations.gov>). In addition, you should submit your request for extension or amendment no later than 120 days prior to the expiration listed above, or the date you need the amendment, respectively.

Any extension or amendment request must meet the requirements of 14 CFR § 11.81.

Sincerely,

/s/

Robert C. Carty  
Deputy Executive Director, Flight Standards Service